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CENTRAL ADMINISTRATIVE TRIBUNAL- PRINCIPAL BENCH

Original Application No. 189 of 2002

New Delhi, this the 21st day of March, 2002

HON'BLE MR. V.K. MAJITHRA, MEMBER (A)

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Joti Parkash

S/o Shri Dina Nath,

R/o Sector-12, House No.101, R.K. Puram,

New Delhi.

...Applicant

(Presently working as Sr. Accounts Officer)

By Advocate: Shri S.K. Gupta, proxy counsel

for Shri B.S. Gupta, Counsel for the
applicant.

Versus

1. Union of India
Through
Secretary, M/o Information & Broadcasting,
Shastri Bhawan,
New Delhi.
2. Controller General of Accounts,
Ministry of Finance,
D/o Expenditure,
Lok Nayak Bhawan,
Khan Market,
New Delhi.
3. Chief Controller of Accounts,
Principal Account Office,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.
4. Assistant Controller of Accounts,
Principal Accounts Officer,
H-Block, Tropical Building,
Connaught Circus,
New Delhi-110 001.
5. Shri Praveen Mandwan
Dy. Controller of Accounts,
C/o Chief Controller of Accounts,
Principal Account Office,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi.
6. Chairman,
Delhi Development Authority,
Vikas Bhawan, INA Market,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Parvinder Chauhan)

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O R D E R (FINAL)By Hon'ble Mr. Kuldeep Singh, Member (Judl)

The applicant has filed this OA challenging the charge-sheet dated 20.9.2001 which contains two articles of charge pertaining to the year 1984-85. The first article of charge pertained to the year 1984-85 for which no explanation was ever called for and the second also pertained to the year 1984-85 for which explanation was called for in the year 1995, which was duly replied to by the applicant and now in the year 2001 the office of respondent has again raised this issue pertaining to the year 1984-85. The applicant has also challenged competency of respondent No.3 for issuing the charge-sheet for major penalty proceedings. It is also submitted that whereas respondent No.2 is the competent authority for issuing major penalty proceedings.

2. The applicant has also submitted that after the receipt of the charge-sheet, he had submitted a representation on 7.12.2001 and requested for withdrawal of charge-sheet on the ground of inordinate delay in initiation of the enquiry but the same has been rejected by the office of respondents vide their letter dated 14.1.2002 (copy of which is annexed at Annexure A-2) and as such the applicant has prayed for the following relief:-

(i) To quash and set aside the charge-sheet dated 20.9.2001 (Annexure A-1) and also memo letter dated 14.1.2002 with all consequential benefits.



7

3. The brief facts of the case, as alleged by the applicant are that, he was sent on deputation in the year 1982 to the Delhi Development Authority as Divisional Accountant and remained there till the year 1985. The working of the applicant remained satisfactory and no finger was ever raised.

4. After his repatriation from the DDA, the applicant joined the present office of the respondents and thereupon got several promotions such as Assistant Accounts Officer, Pay and Accounts Officer and Senior Accounts Officer in the years 1987, 1991 1994 respectively.

5. It is further submitted that when the applicant was working as Senior Accounts Officer, he received a Memo through the office of the respondents dated 22.11.1995 as issued from DDA containing some allegation which pertained to the year 1984-85 to the fact that he had not brought certain facts to the knowledge of the Executive Engineer on account of which no recovery could be effected and for such a lapse, DDA had suffered a loss. On receipt of the aforesaid Memo, the applicant replied to the same vide representation dated 29.1.1996.

6. It is also submitted by the applicant that as per his knowledge everything was closed after that but now all of a sudden he has received a charge-sheet for major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 containing two articles of charges for the

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year 1984-85 and as such it is submitted by the applicant that with regard to Charge No.1, charge-sheet has been issued after 16 years which is clearly a case of inordinate delay. The charge No.2 also pertained to the year 1984-85 for which memo of charges were issued on 20.9.2001 for which a Memo was issued by the DDA on 22.11.1995, i.e., the memo was issued after a lapse of more than 10 years which was duly replied to by the applicant.

7. It is further submitted that Respondent No.5 has been appointed as Inquiry Officer and office of respondents have also appointed Presenting Officer without looking into the facts of inordinate delay and immediately applicant submitted representation on 7.12.2001, a copy is annexed at Annexure A-5 and asked for withdrawal of charge-sheet as that has been issued after a lapse of 16 years and on this aspect applicant has relied on the case entitled as State of Madhya Pradesh Vs. Bani Singh, reported in AIR 1990 SC 1808.

8. The applicant has also submitted that he was under the impression that the charge-sheet will be withdrawn but the respondents vide order dated 14.1.2002, Annexure A-2 has decided to proceed with the enquiry.

9. It is also submitted that the respondent No.2 is competent authority to issue the charge-sheet for major penalty proceedings, respondent No.3 is competent authority to issue minor penalty proceedings and in this case only respondent No.2 is competent authority to issue

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charge-sheet for major penalty proceeding and on this ground of incompetency of respondent No.3, the charge-sheet is liable to be quashed.

10. It is further submitted that applicant can be proceeded under Rule 3 or any other CCS (Conduct) Rules but not under the DDA Conduct, Disciplinary and Appeal Regulations, 1999, as such any proceedings conducted under DDA Conduct Rules are liable to be quashed.

11. In order to challenge the orders, the applicant has taken up the following grounds:-

(i) As there is an inordinate delay of more than 16 years, so the impugned orders are liable to be quashed.

(ii) Respondent No.3 is not competent authority to issue major penalty proceedings whereas respondent No.2 is competent authority to issue major penalty proceedings and on the ground of competency to issue charge-sheet, the same is liable to be quashed.

(iii) Applicant is governed by CCS (Conduct) Rules and not by the DDA Conduct, Disciplinary and Appeal Regulations, 1999 so the Regulations which were issued in the year 1999 are issued arbitrarily and the same regulations cannot be made applicable on the allegations which occurred 15 years back, so the same are liable to be quashed.

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12. The OA is being contested by the respondents. The respondents in their counter-affidavit submitted that it is wrong to say that respondent No.3 has not competency in issuing the impugned charge-sheet. It is submitted that as per the DOP&T Notification dated 30.3.2001 read with Rule 1392) of the CCS (CCA) Rules, 1965, the present respondent No.3 is fully competent to issue the charge-sheet for major penalty so the plea taken by the applicant has to be rejected.

13. It is further submitted by the respondents that there is no inordinate delay in issuing the charge-sheet. The respondents have submitted that, in fact, when the applicant was working in the DDA he had caused a loss to the tune of Rs.10 lakhs so it is submitted that such acts of the public servants causing loss of public money should not be allowed to go unattended and it is in the interest of justice as well as public administration that the guilty are made to face the consequences of their acts.

14. It is also submitted that delay in issuing the charge-sheet cannot be a ground for quashing the charge-sheet or that the law does not mandate that the charge-sheet cannot be issued after the delay.

15. It is also submitted that since the applicant has been receiving his promotions and he has not been prejudiced in any manner because he was neither suspended nor any punishment has been inflicted so the plea of the

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applicant has not force that as the charge-sheet has been issued after a lapse of 16 years, so the same should be quashed.

16. It is also submitted that it is wrong to suggest that the DDA Conduct, Disciplinary and Appeal Regulations came into existence for the first time in the year 1999. It is submitted that the said rules were in existence at the time when the applicant was on deputation with the DDA, therefore, it is prayed that the OA be dismissed.

17. We have heard the learned counsel for the parties and gone through the records of the case.

18. The short question involved in this case is whether the charge-sheet issued to the applicant is liable to be quashed on the ground of inordinate delay taken by the department while issuing the charge-sheet.

19. The statement of Articles of Charge as annexed to the Memo Annexure A-1 shows that the applicant recommended certain payments to the contractor some time in the year 1985 while working in the DDA on deputation. The charge-sheet has been issued on 20.9.2001. The learned counsel for the applicant submitted that no explanation has come forth as to why so much inordinate delay has been taken by the department in issuing the charge-sheet and in support of his contention the counsel for the applicant has relied upon a judgment given in OA Nos. 8/97 and 9/97 by this Tribunal on 28.6.2000 wherein the charge-sheet was issued to the applicant after a

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period of 12 years of the incidence and no explanation was given for the inordinate delay taken by the department and this Tribunal relying upon the judgment of Bani Singh (Supra), quashed the charge-sheet. The matter had also been taken up to the Hon'ble High Court against the said judgment of the Tribunal and the Hon'ble High Court also upheld the order passed by this Tribunal.

20. The counsel for the applicant then also referred to another judgment of M.D. Meena Vs. U.O.I. of Chandigarh Bench of the Tribunal which is a reported in Swamy's News of February, 1998 wherein also the Chandigarh Bench of the CAT had relied upon Bani Singh's case and had quashed the charge-sheet issued to the delinquent officer after a lapse of about 13 years, so relying upon these judgments, the learned counsel for the applicant submitted that in this case since there is no explanation for the inordinate delay so the proceedings should be quashed.

21. As against this, the learned counsel appearing for the respondents submitted that delay is not the only factor on the basis of which the charge-sheet can be quashed. The court has to balance the delay with the gravity of allegations levelled against the delinquent official and then has to find out whether in the interest of justice the proceedings should be quashed or not. To support his contention the learned counsel for the respondents has relied upon the case entitled as State of Punjab and Others Vs. Chaman Lal Goyal reported in 1995 (2) SCC 570 wherein the Hon'ble Supreme Court has observed as under:-

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"...It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing".

22. The Hon'ble Supreme Court has further observed as under:-

"12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately".

23. The learned counsel for the respondents on the basis of these observations made by the Apex Court submitted that in this case the charges are very grave as the applicant, because of his misconduct, has caused huge loss to the exchequer to the tune of Rs.10 lakhs so the charges should not be quashed.

24. We have given our anxious consideration to these submissions made by the rival parties. As far as delay on the part of the department for initiating disciplinary proceedings is concerned, there is no denial

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to this fact. Similarly there is no denial to the fact that there is no explanation for this inordinate delay. Unfortunately in this case the charges against the applicant pertained to the period of the year 1985 when the applicant was working on deputation with the DDA and the counsel who is appearing for the respondents is not representing Delhi Development Authority so he was almost unable to explain the delay as the delay factor was to be explained by the DDA itself. Since no one has come forward on behalf of the DDA to explain the delay, so only irresistible conclusion is that the department has failed to give explanation for the inordinate delay.

25. As regards the graveness of the charges is concerned, merely stating that the delinquent official had caused a loss to the Government funds to the tune of Rs. 10 lakhs and odd that alone cannot condone the delay on the part of the department because in this case the delay is almost for about 17 years and this delay itself would cause enough prejudice to the applicant if he is called upon to face the enquiry. Moreover, the misconduct pertains to that period of duty when the applicant was on deputation so it will not be possible even for the Inquiry Officer to make available the records of the DDA to the applicant so that the applicant may defend himself effectively nor the applicant would be otherwise able to explain as to under what circumstances he had been conducting himself while working with the DDA.

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26. The judgments relied upon by the learned counsel for the respondents is distinguishable on the facts of the case because in that case the charges against the applicant was about the facilitation provided by him to terrorist for their escape from the jail and in that case though the charges had been issued after 5 1/2 years but the enquiry was proceeded with and by the date of the impugned judgment, the Government had completed the evidence also so that factor had also weighed with the Hon'ble Court for not to quash the proceedings but here in this case the enquiry has not yet started and delay is of more than 16 years so the factors weighing against Charged Officer in the case of State of Punjab Vs. Chaman Lal Goyal (Supra) do not exist against the applicant at all so that judgment cannot be applied on facts to the present case.

27. In view of the above, we find that the charge-sheet dated 20.9.2001 and the memo dated 14.1.2002 are liable to be quashed. Accordingly we hereby quash and set aside the charge-sheet as well as memo. These directions may be implemented within a period of 3 months from the date of receipt of a copy of this order. No costs.

(Signature)
(KULDIP SINGH)
MEMBER (JUDL)

(Signature)
(W.K. MAJITHRA)
MEMBER (A)

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